

Message Text

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R 312005Z OCT 73
FM SECSTATE WASHDC
TO USINT BAGHDAD
INFO AMEMBASSY PARIS
AMEMBASSY BRUSSELS

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PARIS FOR RFC
E.O. 11652:N/A
TAGS: AFSP, IR
SUBJECT: IMPOUNDING OF USINT BANK ACCOUNT
REF: STATE 203912

1. DEPARTMENT GIVING FOLLOWING NOTE TOIRAQI INT SECTION
WASHINGTON. USINT BAGHDAD SHOULD MAKE PARALLEL SUBMISSION
TO FONMIN:

2. BEGIN TEXT. THE GOVERNMENT OF THE UNITED STATES
WISHES TO BRING THE FOLLOWING TO THE ATTENTION OF THE GOV-
ERNMENT OF IRAQ: ON OCTOBER 4, 1973, THE BRANCH MANAGER
OF THE IRAQI COMMERCIAL BANK INFORMED THE U.S. INTERESTS
SECTION THAT THE BANK HAD RECEIVED AN ORDER FROM THE SUPER-
VISORY EXECUTORY BODY OF BAGHDAD INSTRUCTING THE BANK TO
IMPOUND 4638.34 IRAQI DINARS (US \$15,770) OF THE U.S.
INTERESTS SECTION CHECKING ACCOUNT AT THE REQUEST OF A
CREDITOR, KHALIL IBRAHIM AL-SHEIKH AHMED. THIS CREDITO
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IS THE LANDLORD OF THE FORMER USIS LIBRARY.

THIS SEIZURE OF THE PROPERTY OF THE GOVERNMENT OF THE UNITED STATES IN IN PLAIN VIOLATION OF RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW CONCERNING THE INVIOABILITY OF THE PROPERTY OF DIPLOMATIC MISSIONS AND THE IMMUNITY OF THE PROPERTY OF SOVEREIGN STATES FROM ATTACHMENT AND EXECUTION.

1. DIPLOMATIC INVIOABILITY. ARTICLE 22, PARAGRAPH 3 OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS (1961) PROVIDES THAT THE PROPERTY OF A DIPLOMATIC MISSION "SHALL BE IMMUNE FROM SEARCH, REQUISITION, ATTACHMENT OR EXECUTION./ AGAIN, ARTICLE 25 OF THE CONVENTION PROVIDES THAT ,THE RECEIVING STATE SHALL ACCORD FULL FACILITIES FOR THE PERFORMANCE OF THE FUNCTIONS OF THE MISSION." ONE OF THE MOST NECESSARY OF SUCH FACILITIES IS THE AVAILABILITY OF BANKING FACILITIES IMMUNE FROM ATTACHMENT AND EXECUTION IN THE RECEIVING STATE.

2. SOVEREIGN IMMUNITY. A SOVEREIGN AND ITS PROPERTY ARE IMMUNE FROM ALL JUDICIAL PROCESS RELATING TO ITS SOVEREIGN OR PUBLIC ACTS. MOREOVER, INTERNATIONAL LAW RECOGNIZES A DISTINCTION BETWEEN IMMUNITY FROM CIVIL JURISDICTION OF COURTS AND FROM EXECUTION ON PROPERTY. ARTICLE 32, PARAGRAPH 4 OF THE VIENNA CONVENTION PROVIDES SPECIFICALLY THAT:

"WAIVER OF IMMUNITY FROM JURISDICTION IN RESPECT OF CIVIL OR ADMINISTRATIVE PROCEEDINGS SHALL NOT BE HELD TO IMPLY WAIVER OF IMMUNITY IN RESPECT OF THE EXECUTION OF THE JUDGMENT, FOR WHICH A SEPARATE WAIVER SHALL BE NECESSARY."

SEE ALSO SEN, B., A DIPLOMAT'S HANDBOOK OF INTERNATIONAL LAW AND PRACTICE, THE HAGUE (1965), PAGES 132-133; TAYLOR V. BEST, 14 C.B. 407; SUAREZ V. SUAREZ, (1917) 2 CH. 131. THIS RULE APPLIES, A FORTIORI, IN CASES OF SOVEREIGN IMMUNITY. IN DEXTER V. KUNGLIG JARNAVGSSTYRELSEN, THE UNITED STATES COURT OF APPEALS SAID: "BUT CONSENTING TO BE SUED DOES NOT GIVE CONSENT TO A SEIZURE OR ATTACHMENT OF THE PROPERTY OF A SOVEREIGN GOVERNMENT. THE CLEAR LIMITED OFFICIAL USE

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PAGE 03 STATE 214598

WEIGHT OF AUTHORITY...IS AGAINST ALL SEIZURES, EVEN THOUGH A VALID JUDGMENT HAS BEEN ENTERED...IT IS BUT RECOGNIZING THE GENERAL INTERNATIONAL UNDERSTANDING, RECOGNIZED BY CIVILIZED NATIONS, THAT A SOVEREIGN'S PERSON AND PROPERTY OUGHT TO BE HELD FREE FROM SEIZURE OR MOLESTATION... 43 F.2D 705, AT PAGE 708. THUS, ALTHOUGH THE GOVERNMENT OF THE UNITED STATES HAS REFRAINED FROM ASSERTING ITS IMMUNITY FROM THE JURISDICTION OF THE COURT OF FIRST IN-

STANCE IN THE ACTION BROUGHT BY MR. KHALIL IBRAHIM AL-SHEIKH AHMED, IT HAS NOT THEREBY WAIVED ITS SOVEREIGN IMMUNITY FROM ATTACHMENT AND EXECUTION UPON ITS PROPERTY.

ACCORDINGLY, THE GOVERNMENT OF THE UNITED STATES REQUESTS THE GOVERNMENT OF IRAQ TO RELEASE THE PROPERTY OF THE UNITED STATES INTERESTS SECTION IN COMPLIANCE WITH THE FOREGOING PRINCIPLES OF INTERNATIONAL LAW GOVERNING THE PROPERTY OF SOVEREIGN STATES. END TEXT. KISSINGER

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